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property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of the NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by the NRCS in furtherance of its federally held property rights are under the jurisdiction of the federal courts and not subject to review under administrative appeal regulations.

§ 1467.19 Scheme and device.

(a) If it is determined by the NRCS that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the NRCS any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

§ 1467.20 Market-based conservation initiatives.

(a) *Acceptance and use of contributions.* Section 1241(e) of the Food Security Act of 1985, as amended, (16 U.S.C. 3841(e)), allows the Chief to accept and use contributions of non-Federal funds to support the purposes of the program. These funds shall be available without further appropriation and until expended, to carry out the program.

(b) *Ecosystem Services Credits for Conservation Improvements.* (1) USDA recognizes that environmental benefits will be achieved by implementing conservation practices and activities funded through WRP, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of a WRP easement, 30-

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year contract, or restoration cost-share agreement. NRCS asserts no direct or indirect interest in these credits. However, NRCS retains the authority to ensure that the requirements of the WRPO, contract, and easement deed are met. Where activities required under an environmental credit agreement may affect land covered under a WRP easement, 30-year contract, or restoration cost-share agreement, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

(2) Section 1222(f)(2) of the Food Security Act of 1985 as amended, does not allow wetlands restored with Federal funds to be utilized for Food Security Act wetland mitigation purposes.

PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

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AUTHORITY: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865-3865d.

SOURCE: 80 FR 11048, Feb. 27, 2015, unless otherwise noted.

Subpart A—General Provisions

§ 1468.1 Applicability.

(a) The regulations in this part set forth requirements, policies, and procedures for implementation of the Agricultural Conservation Easement Program (ACEP) administered by the Natural Resources Conservation Service (NRCS).

(b) The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Subpart B of this part sets forth additional requirements, policies, and procedures for implementation of the Agricultural Land Easements (ALE) component of ACEP.

(d) Subpart C of this part sets forth additional requirements, policies, and procedures for the Wetland Reserve Easement (WRE) component of ACEP.

(e) Easement lands previously enrolled under the Farm and Ranch Lands Protection Program (7 CFR part 1491), the Grassland Reserve Program (7 CFR part 1415), and the Wetlands Reserve Program (7 CFR part 1467) are considered enrolled in ACEP. Existing easements and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements, and any ACEP funding made available for implementation, will be in accordance with this part.

§ 1468.2 Administration.

(a) The regulations in this part will be administered under the general su-

pervision and direction of the NRCS Chief.

(b) NRCS may seek advice from the State Technical Committee on the identification of lands of statewide importance, development of a priority ranking process, and related technical matters.

(c) NRCS may delegate at any time its wetlands reserve easement management responsibilities to other Federal or State agencies or conservation organizations that have appropriate authority, expertise and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(d) NRCS may delegate at any time its wetlands reserve easement monitoring and enforcement responsibilities to other Federal or State agencies that have the appropriate authority, expertise, and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities.

(e) NRCS may consult Federal or State agencies, conservation districts, or other organizations in program administration. No determination by these agencies or organizations will compel NRCS to take any action which NRCS determines does not serve the purposes of the program established by this part.

(f) The Chief may allocate funds for purposes related to: encouraging enrollment by beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, Indian tribes, and veteran farmers or ranchers as authorized by 16 U.S.C. 3844; special pilot programs for easement management and monitoring; cooperative agreements with other agencies and organizations to assist with program implementation; coordination of easement enrollment across State boundaries; coordination of the development of easement plans; or for other goals of the ACEP found in this part.

(g) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or

modifying any determination made under this part.

(h) The Chief may modify or waive nonstatutory, discretionary provisions of this part if the Chief determines the waiver of such discretionary provision is necessary to further the purposes of ACEP under the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the Food Security Act of 1985. The waiver must further ACEP purposes while also addressing whether the purpose and conservation objectives of the RCPP project(s) are consistent with the specific Wetland Reserve Easement (WRE) or Agricultural Land Easement (ALE) conservation purpose and objectives. No waiver will result in reducing the quality of wetland wildlife habitat that is restored under WRE, or the protection for agricultural viability under ALE.

(i) To assist in RCPP implementation the Chief may also waive the applicability of the limitation in section 1001D(b)(2) of the Food Security Act of 1985 for participating landowners if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

§ 1468.3 Definitions.

The following definitions will apply to this part, and all documents issued in accordance with this part, unless specified otherwise:

30-year Contract means an ACEP–WRE contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

Access means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

Acreage owned by Indian Tribes means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe or the Bureau of Indian Affairs.

Active agricultural production means that on lands that meet the definition of being in agricultural use, agricultural or forest-related products or live-

stock are being produced or have been produced within one year of the date of application by an eligible entity for funding under subpart B of this part. Land may also be considered in active agricultural production if it is current or former CRP land that is planted, considered planted, or in conserving use as determined by NRCS.

Agreement means the document that specifies the obligations and rights of NRCS and any person, legal entity, or eligible entity who is participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, a wetland reserve easement restoration agreement, a cooperative agreement, a partnership agreement, or an interagency agreement.

Agreement to purchase means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the wetland reserve easement acquisition process and to incur costs for surveys, title clearance, due diligence activities, and closing procedures on the easement.

Agricultural commodity means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.

Agricultural uses means those activities defined by a State's farm or ranch land protection program, or where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, degrade soils, the agricultural nature of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils,

the agricultural nature of the land, or related natural resources.

Agricultural land easement means an easement or other interest in eligible land that is conveyed for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan.

Agricultural land easement plan means the document developed by NRCS or provided by the eligible entity and approved by NRCS, in consultation with the eligible entity and landowner, that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. The agricultural land easement plan includes a description of the farm or ranch management system, conservation practices that address the resource concerns for which the easement was enrolled, and any required component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part. Where appropriate, the agricultural land easement plan will include conversion of highly erodible cropland to less intensive uses.

Beginning farmer or rancher means an individual or legal entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years and who will materially and substantially participate in the operation of the farm or ranch. This requirement applies to all members of a legal entity.

(2) In the case of an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management

or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Certified entity means an eligible entity that NRCS has determined to meet the certification requirements in 1468.27 for the purposes of ACEP-ALE.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated the authority to act for the Chief.

Commenced conversion wetland means a wetland or converted wetland for which the Farm Service Agency (FSA) has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

Commodity Credit Corporation (CCC) is a wholly-owned government corporation within the Department of Agriculture.

Compatible use means a use or activity conducted on a wetland reserve easement that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area when performed according to amount, method, timing, frequency, intensity, and duration limitations prescribed by NRCS.

Conservation plan is the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and where appropriate, will include conversion of highly erodible cropland to less intensive uses; and

(3) Is developed in accordance with 7 CFR part 12.

Conservation practice means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation Reserve Program (CRP) means the program administered by the CCC pursuant to 16 U.S.C. 3831–3836.

Converted wetland means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose of, or to have the effect of, making possible the production of an agricultural commodity if such production would not have been possible but for such action, and before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland.

Cooperative agreement means the document that specifies the obligations and rights of NRCS and eligible entities participating in the program under subpart B or the document that authorizes the transfer of assistance between NRCS and a non-Federal entity associated with implementation of the program under subpart C.

Cost-share payment means the payment made by NRCS to an eligible entity for the purchase of an ALE easement as set forth in subpart B of this part.

Dedicated fund means an account held by a nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

Easement area means the portion of a parcel that is encumbered by an ACEP easement.

Easement exchange means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its real property rights or interests in an easement which are replaced by real property rights or interests granted through an easement that has equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area. NRCS is not required to exchange any of its rights in an easement, and easement exchanges are discretionary, voluntary, real estate transactions between the United States, landowner,

and other parties with an interest in the easement.

Easement modification means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. NRCS is not required to modify any of its rights in an easement, and easement modifications are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

Easement payment means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP-WRE, or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts.

Easement restoration agreement means the agreement or contract NRCS enters into with the landowner or a third party to implement the WRPO on a wetland reserve easement or 30-year contract enrollment.

Easement subordination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate its real property rights on all or a portion of an easement as part of an easement exchange or easement modification. The subordinated rights will be replaced by rights that are of equivalent or greater conservation value, acreage, and economic value to the United States. NRCS is not required to subordinate any of its rights in an easement, and easement subordinations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

Easement termination means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate its

rights in an easement or portion thereof to facilitate a project that addresses a compelling public need for which there is no practicable alternative and such termination action will result in equivalent or greater conservation value and economic value to the United States, and the United States is provided compensation for such termination. NRCS is not required to terminate any of its rights in an easement, and easement terminations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties that are subject to the requirements of this part. Unless and until the parties enter into a binding termination agreement, any party may withdraw its approval of a termination proposal at any time during the termination process.

Eligible activity means an action other than a conservation practice that is included in the Wetland Reserve Plan of Operations (WRPO), as applicable, and that has the effect of alleviating problems or improving the condition of the resources, including ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an easement or 30-year contract.

Eligible entity means an Indian Tribe, State government, local government, or a nongovernmental organization which has a farmland or grassland protection program that purchases agricultural land easements for the purpose of protecting agriculture use and related conservation values, including grazing uses and related conservation values, by limiting conversion to non-agricultural uses of the land.

Eligible land means private or Tribal land that NRCS has determined to meet the requirements of § 1468.20 or § 1468.30 of this part.

Fair market value means the value of an agricultural land easement as determined using the Uniform Standards of Professional Appraisal Practice, an areawide market analysis or survey, or another industry-approved method approved by the Chief, as established in subpart B or, for a wetland reserve easement, the value of the land as determined using the Uniform Standards of Professional Appraisal Practices or

areawide market analysis or survey, as established in subpart C.

Farm and ranch land of local importance means farm or ranch land used to produce food, feed, fiber, forage, bio-fuels, and oilseed crops that are locally important but not identified as having national or statewide importance. Criteria for defining and delineating this land are to be determined by the appropriate local agency or agencies. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Farm and ranch land of statewide importance means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, bio-fuels, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR part 657.

Farm or ranch succession plan means a general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include specific intra-family succession agreements or business asset transfer strategies to create opportunities for veteran farmers or ranchers or other historically underserved landowners.

Farm Service Agency (FSA) is an agency of the United States Department of Agriculture.

Field Office Technical Guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant,

animal, and energy resources applicable to the local area for which it is prepared.

Fish and Wildlife Service (FWS) is an agency of the United States Department of the Interior.

Forest land means a land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

Forest land of statewide importance means forest land that NRCS, in consultation with the State Technical Committee, identifies as having ecological or economic significance within the State and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

Forest management plan means a site-specific plan developed or approved by NRCS, in consultation with the eligible entity and the landowner, that describes management practices to conserve, protect, and enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or another plan determined appropriate by NRCS. The plan complies with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements.

Grassland of special environmental significance means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to nongrassland uses or fragmentation; and the land is:

- (1)(i) Rangeland, pastureland, or shrubland on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or
- (ii) Improved, naturalized pastureland and rangeland; and

(2)(i) Provides, or could provide, habitat for threatened or endangered species or at-risk species,

(ii) Protects sensitive or declining native prairie or grassland types, or

(iii) Provides protection of highly sensitive natural resources.

Grasslands management plan means the site-specific plan developed or approved by NRCS that describes the management system and practices to conserve, protect, and enhance the viability of the grassland. The grasslands management plan will include a description of the grassland management system consistent with NRCS practices contained in the FOTG, including the prescribed grazing standard for easements that will be managed using grazing; the management of the grassland for grassland-dependent birds, animals, or other resource concerns for which the easement was enrolled; the permissible and prohibited activities; and any associated restoration plan or conservation plan. The grasslands management plan is a component of either an agricultural land easement plan or wetland reserve plan of operations.

Historical and archaeological resources mean resources that are:

(1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16 U.S.C. 470, *et seq.*);

(2) Formally determined eligible for listing in the National Register of Historic Places (by the State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA);

(3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA); or

(4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

Historically underserved landowner means a beginning, limited resource, or socially disadvantaged farmer or rancher.

Imminent harm means easement violations or threatened violations that, as

determined by NRCS, would likely cause immediate and significant degradation to the conservation values for which the easement was acquired.

Impervious surface means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians, including, for the purposes of this part, pueblos.

Land evaluation and site assessment system means the land evaluation system approved by NRCS and used, when applicable, to rank land for farm and ranch land protection purposes based on soil potential for agriculture, as well as social and economic factors such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR part 658.

Landowner means a person, legal entity, or Indian Tribe having legal ownership of land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. State governments, local governments, and nongovernmental organizations that qualify as eligible entities are not eligible as landowners, unless otherwise determined by the Chief.

Lands substantially altered by flooding means areas where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop and retain wetland soil, hydrology, and vegetation characteristics over time.

Limited resource farmer or rancher means either:

(1)(i) A person with direct or indirect gross farm sales not more than the cur-

rent indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data); or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Maintenance means work performed to keep the wetland reserve easement functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work to manage, prevent deterioration, repair damage, or replace conservation practices or activities on a wetland reserve easement, as approved by NRCS.

Natural Resources Conservation Service (NRCS) means an agency of the U.S. Department of Agriculture (USDA), including when NRCS carries out program implementation using the funds, facilities, or authorities of the CCC.

Nongovernmental organization means any organization that for purposes of qualifying as an eligible entity under subpart B:

(1) Is organized for, and at all times since, the formation of the organization and has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is exempt from taxation under 501(a) of that Code; and

(3) Is described—

(i) In section 509(a)(1) and (2) of that Code, or

(ii) Is described in section 509(a)(3) of that Code and is controlled by an organization described in section 509(a)(2) of that Code.

Other interests in land include any right in real property other than easements that are recognized by State law that the Chief determines can be purchased by an eligible entity to further

the agricultural use of the land and other ACEP–ALE purposes.

Other productive soils means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland and farm and ranch land of statewide and local importance.

Parcel means the defined area of land and may be a portion or all of the area of land that is owned by the landowner.

Participant means a person, legal entity, Indian Tribe, native corporation, or eligible entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an agreement to purchase or 30-year contract, or the cooperative agreement for agricultural land easements.

Pending offer means a written bid, contract, or option extended to a landowner by an eligible entity to acquire an agricultural conservation easement before the legal title to these rights has been conveyed for the purposes of protecting the agricultural use and future viability, including the protection of grazing uses and related conservation values, by limiting non-agricultural uses of the land or by restoring and conserving eligible land.

Permanent easement means an easement that lasts in perpetuity.

Person means a natural person.

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by NRCS.

Private land means land that is not owned by a governmental entity and includes acreage owned by Indian Tribes, as defined in this part.

Projects of special significance means projects identified by the Chief using the criteria identified in § 1468.24 of this part.

Right of enforcement means the right of the United States to inspect the easement area and to enforce the easement entered into under this part in those instances in which the grantee of the easement does not fully protect the interests provided to the grantee under the easement.

Riparian areas means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, and includes the Directors of the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

State Technical Committee means a committee established pursuant to 16 U.S.C. 3861 and 7 CFR part 610, subpart C.

Unique farmland means land other than prime farmland that is used for the production of specific high-value food and fiber crops as determined by NRCS. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR part 657 and 7 CFR part 658.

Veteran farmer or rancher means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(e)).

Wetland means land that:

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Supports a prevalence of such vegetation under normal circumstances.

Wetland reserve easement means a reserved interest easement which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the United States, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

Wetland reserve plan of operations (WRPO) means the document that is developed or approved by NRCS that identifies how the wetland functions and values and associated habitats on the easement will be restored, improved, and protected to achieve the purposes of the wetland reserve easement enrollment.

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at-risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flood;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage;

(7) Carbon sequestration; and

(8) Contribution to educational and scientific scholarship.

Wetland restoration means the rehabilitation of degraded or lost habitat in a manner such that:

(1) The original vegetation community and hydrology are, to the extent practical, re-established; or

(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation

being established will substantially replace original habitat functions and values and does not involve more than 30 percent of the easement area.

§ 1468.4 Appeals.

(a) ACEP-ALE eligibility of entities. An entity which has submitted an ACEP-ALE application to be considered an eligible entity may obtain a review of any administrative determination concerning their eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(b) ACEP-WRE applicants and participants. An applicant or participant in the ACEP-WRE may obtain a review of any administrative determination concerning eligibility for participation or receipt of payment utilizing the administrative appeal regulations provided in 7 CFR parts 11 and 614.

(c) Easement administration determinations under ACEP after easement closing. NRCS determinations that are made pursuant to its rights in an ACEP-funded easement after closing may be appealed to the State Conservationist as specified in the notice provided to the landowner when NRCS exercises its rights under the easement. Such determinations are not subject to appeal under 7 CFR part 11.

§ 1468.5 Scheme or device.

(a) If it is determined by NRCS that anyone has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid during the applicable period may be withheld or be required to be refunded with interest, thereon, as determined appropriate by NRCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving anyone of a program benefit, or for the purpose of obtaining a payment to which they would otherwise not be entitled.

§ 1468.6 Subordination, exchange, modification, and termination.

(a) After an easement has been recorded, no subordination, exchange, modification, or termination will be

made in any interest in land, or portion of such interest, except as approved by the NRCS.

(b) NRCS may approve subordinations, exchanges, modifications, or terminations if NRCS determines that:

(1) It is in the Federal Government's interest to subordinate, exchange, modify, or terminate the interest in the land enrolled in the program;

(2) The subordination, exchange, modification, or termination action will address a compelling public need or will facilitate the practical administration and management of the easement area or the program, as determined by the NRCS;

(3) There is no practicable alternative that would address the compelling public need and avoid the easement area;

(4)(i) The change will not adversely affect the conservation functions and values for which the easement was acquired or

(ii) If there are no practicable alternative that exists other than impact to the conservation value of the easement area, such adverse impacts have been minimized to the greatest extent practicable, and any remaining adverse impacts mitigated by enrollment of other lands that provide equal or greater conservation functions and values, as determined by NRCS, at no cost to the government;

(5) The easement subordination, modification, exchange, or termination under this section will not affect more than 10 percent of the original easement area. NRCS may authorize a greater percentage of the original easement area to be affected if NRCS determines that it is impracticable to achieve program purposes on the original easement area; and

(6) The subordination, exchange, modification, or termination action will result in comparable conservation functions and value and equivalent or greater economic value to the United States as determined pursuant to paragraph (d) of this section.

(c) NRCS must determine that the landowner and, if applicable, the eligible entity agree to such easement subordination, modification, exchange, or termination prior to considering that

such easement administration action should be approved.

(d) A determination of equal or greater economic value to the United States under paragraph (b) of this section will be made in accordance with an approved easement valuation methodology for ALE easements under subpart B or for WRE easements under subpart C. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the easement administration action results in equal or greater economic value to the United States.

(e) Subordinations, exchanges, modifications, or terminations must result in equal or greater conservation and economic values to the United States. Subordinations, exchanges, or modifications of ACEP easements must result in no net loss of easement acres.

(f) When reviewing a proposed action under this section, the preferred alternative is to avoid the easement area. If the easement area cannot be avoided entirely, then the preferred alternative should minimize impacts to the original easement area and its conservation functions and values.

(g) Easement modifications, including subordinations, are preferred to easement exchanges which involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will result in equal or greater conservation and economic values to the United States.

(h) Replacement of easement acres as part of an easement exchange must occur within the same State and within the same eight-digit watershed as determined by the hydrologic unit codes developed by the U.S. Geological Survey.

(i) Where NRCS determines that reordination of a new deed is necessary to effect an easement administration action under this section, NRCS will use the most recent version of the ACEP deed document or deed terms approved by NRCS.

(j) If a modification, subordination or exchange involves an amended or new

easement deed, the amended or new easement deed will be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation of documents.

(k) At least 90 days prior to taking any termination action, written notice of such termination action will be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(l) A termination must meet criteria identified in this part and are limited to those circumstances where NRCS determines that the purposes of the program can no longer be achieved on the original easement area or the terms of the easement are no longer enforceable and there are no acceptable replacement acres available. NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, and legal filing fees.

(m) *Easement plan.* Insofar as is consistent with the easement and applicable law, NRCS may approve modifications to an easement plan that do not affect provisions of the easement. Easement plans include any agricultural land easement plans and component plans, wetland reserve plans of operations, or wetland reserve easement restoration agreements. Any easement plan modification must meet ACEP regulations and program objectives and must result in equal or greater conservation benefits on the enrolled land.

§ 1468.7 Transfer of land.

(a) *Offers voided.* Any transfer of the property prior to recording the easement in the applicable land records or executing the 30-year contract may void the availability of ACEP funding for that easement transaction, unless the new landowner is determined eligible, the transfer is approved by NRCS,

and the new landowner is willing to comply with ACEP requirements.

(b) *Payments to participants.* For wetland reserve easements with annual installment payments, any remaining easement payments will be made to the original participants unless NRCS receives an assignment of proceeds.

(c) *Claims to payments.* With respect to any and all payments owed to participants, NRCS will bear no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of payments, NRCS may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

§ 1468.8 Payments not subject to claims.

Any cost-share, contract, agreement, or easement payment or portion, thereof, due any person, legal entity, Indian Tribe, eligible entity, or other party under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1468.9 Assignments.

Any person, legal entity, Indian Tribe, eligible entity, or other party entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 1468.10 Environmental markets.

(a) *Ecosystem services credits for conservation improvements under a wetland reserve easement.* Landowners may obtain environmental credits under other programs but such action must not adversely affect the interests granted under the easement to the United States or be inconsistent with or defeat the conservation purpose for which the easement is acquired.

(b) *Ecosystem Services Credits Related to an Agricultural Land Easement:* Landowners may obtain environmental credits under other programs but such action must not adversely affect the interests granted under the easement to the grantee or to the United States right of enforcement or be inconsistent

with or defeat the conservation purpose for which the easement is acquired.

Subpart B—Agricultural Land Easements

§ 1468.20 Program requirements.

(a) *General.* (1) Under ACEP–ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is subject to a written pending offer from an eligible entity for the purpose of protecting the agricultural use, including grazing, and related conservation values of the land by limiting nonagricultural uses of the land.

(2) To participate in ACEP–ALE, eligible entities as identified in paragraph (b) of this section must submit applications to NRCS State offices to partner with NRCS to acquire conservation easements on eligible land. Eligible entities with applications selected for funding must enter into a cooperative agreement with NRCS and use the NRCS required minimum deed terms specified therein, the effect of which is to protect natural resources and the agricultural nature of the land and permit the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan as approved by NRCS.

(3) Under the agreement, the Federal share of the cost of an agricultural land easement or other interest in eligible land will not exceed 50 percent of the fair market value of the agricultural land easement and the eligible entity will provide a share that is at least equivalent to the Federal share, and at least 50 percent of the eligible entity share is from the eligible entity's own cash resources unless otherwise specified in this part.

(4) The duration of each agricultural land easement or other interest in land will be in perpetuity or the maximum duration permitted by State law.

(b) *Entity eligibility.* (1) To be eligible to receive ACEP–ALE funding, an Indian Tribe, State, unit of local government, or a nongovernmental organization must meet the definition of eligi-

ble entity as listed in §1468.3. In addition, eligible entities interested in receiving ACEP–ALE funds must provide NRCS sufficient evidence of:

- (i) A commitment to long-term conservation of agricultural lands,
- (ii) A capability to acquire, manage, and enforce easements,
- (iii) Sufficient number of staff dedicated to monitoring and easement stewardship, and
- (iv) The availability of funds at the time of application sufficient to meet the eligible entity's contribution requirements for each parcel proposed for funding.

(2) All entities identified on the application or agreement must:

- (i) Ensure that their records and the records of all landowners with parcels selected for funding have been established in the USDA customer records system and are responsible for ensuring that USDA has all the documentation needed to establish these records, and
- (ii) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170, and maintain such registration for the duration of the cooperative agreement.

(c) *Landowner eligibility.* Under ACEP–ALE, the parcel landowners must:

- (1) Be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions of 7 CFR part 1400;
- (2) Agree to provide access to the property and such information to NRCS as the agency deems necessary or desirable to assist in its determination of eligibility for program implementation purposes; and

- (3) Have their records established in the USDA customer records system.

(d) *Land eligibility.* (1) Land will only be considered eligible for enrollment in ACEP–ALE based on NRCS determination that such land:

- (i) Is private or Tribal land on a farm or ranch subject to a written pending offer by an eligible entity,
- (ii) Contains at least 50 percent prime or unique farmland, or designated farm

and ranch land of State or local importance unless otherwise determined by NRCS, contains historical or archaeological resources, the enrollment of which would protect grazing uses and related conservation values by restoring and conserving land, or furthers a State or local policy consistent with the purposes of the ACEP-ALE,

(iii) Is cropland; rangeland; grassland or land that contains forbs or shrubland for which grazing is the predominant use; located in an area that has been historically dominated by grassland, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value; pastureland; or nonindustrial private forest land that contributes to the economic viability of a parcel offered for enrollment or serves as a buffer to protect such land from development, and

(iv) Possesses suitable onsite and off-site conditions which will allow the easement to be effective in achieving the purposes of the program.

(2) If land offered for enrollment is determined eligible under paragraph (d)(1) of this section, then NRCS may also enroll land that is incidental to the eligible land if the incidental land is determined by NRCS to be necessary for the efficient administration of an agricultural land easement.

(3) Eligible land, including eligible incidental land, may not include forest land of greater than two-thirds of the easement area unless waived by NRCS with respect to lands identified by NRCS as sugar bush that contributes to the economic viability of the parcel. Land with contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area will have a forest management plan before the easement is purchased and compensation paid to the landowner unless NRCS has approved an alternative means by which the forest land's contribution to the economic viability of the land has been demonstrated.

(e) *Ineligible land.* The following land is not eligible for enrollment in ACEP-ALE:

(1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes;

(2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government;

(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values including those listed in the statute under eligible land;

(4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the program;

(5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous substances, proposed or existing rights of way, infrastructure development, or adjacent land uses;

(6) Land which NRCS determines to have unacceptable exceptions to clear title or insufficient legal access; or

(7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP-ALE unless it is determined by NRCS that the third party rights will not harm or interfere with the conservation values or agricultural uses of the easement, that any methods of exploration and extraction will have only a limited and localized impact on the easement, and the limitations are specified in the ALE deed.

§ 1468.21 Application procedures.

(a) To apply for enrollment under a new agreement or if applicable, under an existing agreement in a subsequent fiscal year, an eligible entity must submit an entity application for an ACEP-ALE agreement and any associated individual parcel applications to NRCS in the State where parcels are located.

(b) Applications may be submitted on a continuous basis or in response to specific program solicitations. NRCS may announce one or more application cut-off dates for funding consideration within a given fiscal year.

(c) NRCS will determine the entity, land, and landowner eligibility based on the application materials provided

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by the eligible entity, onsite assessments, and the criteria set forth in §1468.20.

(d) At the end of each fiscal year, the lists of pending, unfunded eligible parcels will be cancelled unless the eligible entity requests that specific parcels be considered for funding in the next fiscal year and provides updated application information to NRCS.

§ 1468.22 Establishing priorities, ranking considerations and project selection.

(a) After NRCS determines the eligibility of the landowner and the land, it can score and rank the parcels for funding. NRCS will use national and State criteria to score and rank eligible parcels. The national ranking criteria will comprise at least half of the ranking score. The State criteria will be developed by NRCS on a State-by-State basis, with advice from the State Technical Committee. Eligible parcels are ranked at the State level.

(b) The national ranking criteria are:

(1) Percent of prime, unique, and other important farmland in the parcel to be protected;

(2) Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected;

(3) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture;

(4) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture;

(5) Percent population growth in the county as documented by the United States Census;

(6) Population density (population per square mile) as documented by the most recent United States Census;

(7) Existence of a farm or ranch succession plan or similar plan established to address farm viability for future generations;

(8) Proximity of the parcel to other protected land, such as military installations; land owned in fee title by the United States or an Indian Tribe, State

or local government, or by a non-governmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use;

(9) Proximity of the parcel to other agricultural operations and agricultural infrastructure;

(10) Maximizing the protection of contiguous acres devoted to agricultural use;

(11) Whether the land is currently enrolled in CRP in a contract that is set to expire within one year and is grassland that would benefit from protection under a long-term easement; and

(12) Other additional criteria as determined by NRCS.

(c) State or local criteria as determined by NRCS, with advice of the State Technical Committee, may only include:

(1) The location of a parcel in an area zoned for agricultural use;

(2) The eligible entity's performance in managing and enforcing easements. Performance must be measured by the efficiency by which easement transactions are completed or percentage of parcels that have been monitored and the percentage of monitoring results that have been reported;

(3) Multifunctional benefits of farm and ranch land protection including social, economic, historical and archaeological, environmental benefits, species protection, or climate change resiliency;

(4) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional conservation goals and objectives, or enhance existing government or private conservation projects;

(5) Diversity of natural resources to be protected;

(6) Score in the land evaluation and site assessment system or equivalent measure for grassland enrollments. This score serves as a measure of agricultural viability (access to markets and infrastructure); and

(7) Other criteria determined by NRCS that will allow for the selection of parcels that will achieve ACEP-ALE purposes.

(d) If NRCS determines that the purchase of two or more agricultural land easements are comparable in achieving program goals, NRCS will not assign a higher priority to any one of these agricultural land easements solely on the basis of lesser cost to the program.

(e) NRCS will rank all eligible parcels that have been submitted prior to an application cut-off date in accordance with the national and State ranking criteria before selecting parcels for inclusion in a cooperative agreement.

(f) NRCS will list the selected eligible parcels in the cooperative agreements with the eligible entities that submitted the parcels, and the cooperative agreements will be signed by NRCS and eligible entities.

(g) If the terms of the cooperative agreement allow for amendments in a subsequent fiscal year, the subsequent fiscal year's selected eligible parcels will be identified on an amendment to the cooperative agreement for that fiscal year. Funds for each subsequent fiscal year's parcels will be obligated with new NRCS and eligible entity signatures on each fiscal year's amendment. Parcels funded on each fiscal year's amendment will have a separate deadline for easement purchase, requesting reimbursement, and funding expiration.

§ 1468.23 Cooperative agreements.

(a) NRCS will enter into a cooperative agreement with selected eligible entities that stipulates the terms and conditions under which the eligible entity is permitted to use ACEP-ALE funding, and will incorporate all ACEP-ALE requirements. NRCS will make a cooperative agreement template available to the eligible entities. The cooperative agreement will address:

(1) The interests in land to be acquired, including the United States' right of enforcement, the minimum deed requirements, as well as the form and other terms and conditions of the easement deed;

(2) The management and enforcement of the rights on lands acquired with ACEP-ALE funds;

(3) The responsibilities of NRCS;

(4) The responsibilities of the eligible entity on lands acquired with ACEP-ALE funds;

(5) The requirement for each easement to have an agricultural land easement plan that is approved by NRCS and signed by the landowner and the eligible entity prior to execution of the easement deed and payment of easement compensation to the landowner;

(6) The allowance of eligible parcel substitution upon mutual agreement of the parties;

(7) The certification by the landowner at the time of easement execution and payment of easement compensation of the extent of any charitable contribution the landowner has provided to eligible entity; and

(8) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

(b) The term of cooperative agreements will be up to 5 fiscal years following the fiscal year the agreement is signed for certified entities and up to 3 fiscal years following the fiscal year the agreement is signed for other eligible entities.

(c) The cooperative agreement will include an attachment listing the eligible parcels accepted by the NRCS. This list will include landowners' names and addresses, acreage, the estimated fair market value, the estimated Federal contribution, and other relevant information.

(d) The cooperative agreement will require the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended) and 2 CFR parts 25 and 170.

(e) With NRCS approval, the eligible entity may substitute acres within a pending easement offer. Substituted acres must not decrease the monetary value of the offered easement or reduce the easements capability in meeting program purposes. With NRCS approval, an eligible entity may substitute pending easement offers within their cooperative agreement. The substituted landowner and easement offer must meet eligibility criteria as described in §1468.20. NRCS may require re-ranking of substituted acres within

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an easement offer and substituted easement offers within a cooperative agreement.

§ 1468.24 Compensation and funding for agricultural land easements.

(a) *Determining the fair market value of the agricultural land easement.* (1) The Federal share will not exceed 50 percent of the fair market value of the agricultural land easement, as determined using:

(i) An appraisal using the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions,

(ii) An areawide market analysis or survey, or

(iii) Another industry-approved method approved by NRCS.

(2) Prior to receiving funds for an agricultural land easement, the eligible entity must provide NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets the requirements of this part.

(3) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser. The appraisal must conform to the Uniform Standards of Professional Appraisal Practices or the Uniform Appraisal Standards for Federal Land Acquisitions as selected by the eligible entity.

(4) If the fair market value of the easement is determined using an areawide market analysis or survey, the areawide market analysis or survey must be completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis or survey. The use of areawide market analysis or survey must be approved by NRCS prior to entering a cooperative agreement.

(5) Requests to use another industry-approved method must be submitted to NRCS and approved by NRCS prior to entering into the cooperative agreement. NRCS will identify the applica-

ble industry standards and any associated NRCS specifications based on the methodology approved.

(6) NRCS will review for quality assurance purposes, appraisals, areawide market analysis or surveys, valuation reports, or other information resulting from another industry-approved method approved for use by NRCS. Eligible entities must provide a copy of the applicable report or other information used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned date of easement execution and payment of easement compensation to the landowner.

(7) Prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner, NRCS must approve the determination of the fair market value of the agricultural land easement upon which the Federal share will be determined.

(8) The landowner may make a charitable donation for a qualified conservation contribution (as defined by Section 170(h) of the Internal Revenue Code of 1986) to the eligible entity as provided in paragraph (b) of this section.

(b) *Determining the Federal share of the agricultural land easement.* (1) Subject to the statutory limits, NRCS may provide up to 50 percent of the fair market value of the agricultural land easement. An eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is at least equivalent to the Federal share.

(2) An eligible entity may include as part of its share a charitable donation or qualified conservation contribution (as defined by section 170(h) of the Internal Revenue Code of 1986) from the landowner if the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the amount of the Federal share.

(3) NRCS may authorize a waiver to increase the Federal share of the cost an agricultural land easement to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if:

(i) NRCS determines the lands to be enrolled are grasslands of special environmental significance as defined in this part,

(ii) An eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is no less than 33.33 percent of the Federal share. The eligible entity share may include a qualified landowner contribution if the eligible entity contributes its own cash resources in an amount that is at least 16.67 percent of the Federal share, and

(iii) The eligible entity agrees to incorporate and enforce the additional necessary deed restrictions to manage and enforce the easement to ensure the grasslands of special environmental significance attributes are protected.

(4) NRCS may waive a portion of the applicable eligible entity cash contribution requirement for enrollments that NRCS determines are of projects of special significance, including ALE enrollments that have received a waiver as grasslands of special environmental significance waiver. The waiver of the entity cash contribution does not result in an increase in the applicable Federal share and may only be authorized if NRCS determines the parcel is a project of special significance and NRCS determines that—

(i) The transaction is subject to an increase in the private landowner donation that is equal to the amount of the waiver,

(ii) The increase in the landowner donation is voluntary,

(iii) The property is in active agricultural production,

(iv) The agricultural land easement plan will address the protection of the attributes resulting in the parcel being a project of special significance, and

(v) The eligible entity contributes its own cash resources in an amount that is:

(A) For projects of special significance that are not grasslands of special environmental significance, at least 25 percent of the amount of the Federal share, or at least 10 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land; and

(B) For enrollment on lands that has received a grasslands of special envi-

ronmental significance waiver, at least 8.33 percent of the amount of the Federal share, or at least 3.33 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land.

(vi) The parcel must meet definition of project of special significance and meet one or more of the following national criteria. The parcel is:

(A) Listed on the National Register of Historic Places or is a traditional cultural property;

(B) Located within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land;

(C) Located within a metropolitan statistical area;

(D) An education or demonstration farm or ranch focused on agricultural production and natural resource conservation;

(E) A farm or ranch operated for the purpose of increasing participation in agriculture and natural resource conservation by underserved communities, veterans, beginning farmers or ranchers, or disabled farmers or ranchers;

(F) Officially designated as having been in the same family ownership for over 100 years; or

(G) Meets the definition of grasslands of special environmental significance.

(c) *Uses of NRCS ACEP-ALE funds.* (1) ACEP-ALE funds may not be used for eligible entity expenditures for appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.

(2) NRCS will conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and its hazardous materials reviews.

(3) NRCS may provide technical assistance to develop an agricultural land easement plan or component plans or may provide ACEP-ALE funds to technical service providers (TSP) under 7 CFR part 652 to develop the agricultural land easement plan or component easement plans.

§ 1468.25 Agricultural land easement deeds.

(a) Under ACEP–ALE, a landowner grants an easement to an eligible entity with which NRCS has entered into an ACEP–ALE cooperative agreement. The easement deed will require that the easement area be maintained in accordance with ACEP–ALE goals and objectives for the term of the easement.

(b) Written pending offers by an eligible entity must be for acquiring an easement in perpetuity, except where State law prohibits a permanent easement. In such cases where State law limits the term of a conservation easement, the easement term will be for the maximum duration allowed under State law.

(c) The eligible entity may use its own terms and conditions in the agricultural land easement deed, but the agricultural land easement deed must contain the minimum deed requirements as specified by NRCS in the cooperative agreement, either in the deed or through an addendum that is incorporated therein.

(d) For eligible entities that have not been certified, the deed document must be reviewed and approved by NRCS in advance of use as provided herein:

(1) The eligible entity must submit individual agricultural land easement deeds to NRCS at least 90 days before the planned easement purchase date and be approved by NRCS in advance of use.

(2) Eligible entities with multiple eligible parcels in a cooperative agreement may submit an agricultural land easement deed template for review and approval. The deed templates must be reviewed and approved by NRCS in advance of use.

(3) NRCS may conduct an additional review of the agricultural land easement deeds for individual parcels prior to the execution of the easement deed by the landowner and the eligible entity to ensure that they contain the same language as approved by National Headquarters and that the appropriate site-specific information has been included.

(e) NRCS reserves the right to require additional specific language or require removal of language in the ag-

ricultural land easement deed to ensure the enforceability of the easement deed, protect the interests of the United States, or to otherwise ensure ALE purposes will be met.

(f) Among the minimum deed requirements specified in the cooperative agreement, the deed must:

(1) Include a right of enforcement clause for NRCS. NRCS will specify the terms for the right of enforcement clause, including that such interest in the agricultural land easement remains in effect for the duration of the easement and any changes that affect NRCS's interest in the agricultural land easement must be reviewed and approved by NRCS under § 1468.6 of this part.

(2) Ensure compliance with an agricultural land easement plan that is provided by the eligible entity in consultation with the landowner, approved by NRCS, and implemented according to NRCS requirements. NRCS may provide technical assistance for the development or implementation of the agricultural land easement plan. If the parcel contains highly erodible land, the conservation plan component of the agricultural land easement plan will be developed and managed in accordance with the Food Security Act of 1985 and its associated regulations. The access must be sufficient to provide the United States ingress and egress to the easement area to ensure compliance pursuant to its right of enforcement.

(3) Specify that impervious surfaces will not exceed 2 percent of the ACEP–ALE easement area, excluding NRCS-approved conservation practices unless NRCS grants a waiver as follows:

(i) The eligible entity may request a waiver of the 2 percent impervious surface limitation at the time that a parcel is approved for funding.

(ii) NRCS may waive the 2 percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces.

(iii) Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water

quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired.

(iv) Eligible entities may submit an impervious surface limitation waiver process to NRCS for review and consideration. The eligible entities must apply any approved impervious surface limitation waiver processes on an individual easement basis, and

(v) NRCS will not approve blanket waivers or entity blanket waiver processes of the impervious surface limitation. All ACEP-ALE easements must include language limiting the amount of impervious surfaces within the easement area.

(4) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP-ALE. This provision cannot be waived.

(5) Include an amendment clause requiring that any changes to the easement deed after its recordation must be consistent with the purposes of the agricultural land easement and this part. Any substantive amendment, including any subordination of the terms of the easement or modifications, exchanges, or terminations of the easement area, must be approved by NRCS prior to recordation or else the action is null and void.

(6) Prohibit commercial and industrial activities except those activities that NRCS has determined are consistent with the agricultural use of the land.

(7) Prohibit the subdivision of the property subject to the agricultural land easement, except where state or local regulations explicitly require subdivision to construct residences for employees working on the property or where otherwise authorized by NRCS.

(8) Include specific protections related to the purposes for which the agricultural land easement is being purchased, including provisions to protect historic or archaeological resources or grasslands of special environmental significance.

(9) Other minimum deed terms specified by NRCS to ensure that ACEP-ALE purposes are met.

(g) NRCS will make available for an eligible entity's use a standard set of minimum deed terms that could be wholly incorporated along with the eligible entity's own deed terms into the agricultural land easement deed, or as an addendum that is attached and incorporated by reference into the deed. If an eligible entity agrees to use the standard set of minimum deed terms, NRCS and the eligible entity will identify in the cooperative agreement those minimum standard deed terms as a requirement and the review of individual deeds may not be required. The minimum standard deed terms will specify that if such terms conflict with other terms of the deed, the NRCS terms superseded and prevail. NRCS may place priority on applications where an eligible entity agrees to use the standard set of minimum deed terms.

(h) The eligible entity will acquire, hold, manage, monitor, and enforce the easement. The eligible entity may have the option to enter into an agreement with a governmental or private organizations that have no property rights or interests in the easement area to carry out easement monitoring, management and enforcement responsibilities.

(i) All agricultural land easement deeds acquired with ACEP-ALE funds must be recorded. The eligible entity will provide proof of recordation to NRCS within the timeframe specified in the cooperative agreement.

§ 1468.26 Agricultural land easement plan.

(a) The terms of the agricultural land easement deed will permit the landowner the right to continue agricultural production and related uses subject to an agricultural land easement plan, approved by NRCS and the landowner. An agricultural land easement plan is required on all ACEP-ALE easements and at a minimum must:

(1) Describe the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired;

(2) Identify required and recommended conservation practices that address the purposes and resource concerns for which the parcel was selected;

(3) Identify additional or specific criteria associated with permissible and

prohibited activities consistent with the terms of the deed; and

(4) If the agricultural land easement contains certain land use types, a component plan must be incorporated by reference into the agricultural land easement plan for each land use type present on the easement as follows:

(i) Grasslands must have a grasslands management plan as defined in this part which includes a description of the grazing management system consistent with NRCS prescribed grazing standards,

(ii) Forest land as described in §1468.20(d)(3) must have a forest management plan, and

(iii) Highly erodible land must have a conservation plan wherein NRCS may require the conversion to less intensive uses. The terms of the conservation plan must be developed and managed in compliance with the Food Security Act of 1985 and its associated regulations.

(5) The eligible entity is responsible to obtain and provide the agricultural land easement plan to NRCS. The agricultural land easement plan may be developed by NRCS, a qualified TSP, or an NRCS-certified conservation planner with current certifications.

(6) Prior to the execution of the easement by the eligible entity and the landowner and payment of easement compensation to the landowner, the agricultural land easement plan must be approved by NRCS and be signed by the landowner and the eligible entity. The eligible entity is primarily responsible to ensure compliance with any required provisions of the agricultural land easement plan.

(b) [Reserved].

§ 1468.27 Eligible entity certification.

(a) To be considered for certification, an entity must submit a written request for certification to NRCS, which specifically addresses the following items:

(1) An explanation of how the entity meets the requirements identified in §1468.20(d) of this section;

(2) An agreement to use for ACEP–ALE funded acquisitions easement valuation methodologies identified in section §1468.24 of this part;

(3) Proof that the entity holds, manages, and monitors a minimum of 25

agricultural land conservation easements, unless the entity requests and receives a waiver of this requirement from NRCS;

(4) Proof that the entity holds, manages, and monitors a minimum of five ACEP–ALE, FRPP, or Farmland Protection Program conservation easements;

(5) A showing of a demonstrated ability to complete acquisition of easements in a timely fashion;

(6) A showing that it has the capacity to enforce the provisions of easement deeds and history of such enforcement;

(7) For nongovernmental organizations, information that the entity possesses a dedicated fund for the purposes of easement management, monitoring, and enforcement where such fund is sufficiently capitalized. The fund must be dedicated to the purposes of managing, monitoring, and enforcing each easement held by the eligible entity; and

(8) A plan for administering easements enrolled under this part, as determined by NRCS.

(b) NRCS will notify an entity in writing whether they have been certified and the rationale for the agency's decision. When NRCS determines an entity qualifies as certified:

(1) NRCS may enter into a cooperative agreement with the certified entity through which NRCS may obligate funding for up to 5 fiscal years. New parcels or prior-year unfunded parcels submitted for funding by certified entities must compete for funding each year. Selected parcels and funding will be added to the existing cooperative agreement using an amendment to the cooperative agreement. Amendments added in the last year of the agreement cannot be extended;

(2) NRCS will accept applications from certified entities continuously throughout the fiscal year;

(3) The terms of the cooperative agreement will include the minimum deed terms and conditions to ensure that ACEP–ALE purposes will be met by the certified entity without requiring NRCS to pre-approve each easement transaction prior to closing.

(i) Certified entities may purchase easements without NRCS approving the agricultural land easement deeds,

agricultural land easement plans, titles, or appraisals before the purchase of the easement;

(ii) Certified entities will prepare the agricultural land easement deeds, agricultural land easement plans, titles, and appraisals in accordance with NRCS requirements as identified in the cooperative agreement;

(4) NRCS may provide technical assistance to develop the agricultural land easement plan.

(5) NRCS will conduct quality assurance reviews of a percentage of the agricultural land easement transactions submitted by the certified entity for payment and annual monitoring reports submitted by the certified entity. The review will include whether the deed, title review, agricultural land easement plan, easement valuation determinations, and subsequent monitoring were conducted in accordance with the requirements set forth by NRCS in its certification of the eligible entity or in the cooperative agreement entered into with the certified entity; and

(6) If an agricultural land easement deed, agricultural land easement plan, title, appraisal, or other easement valuation determination, or monitoring report fails the NRCS quality assurance review, NRCS will provide the certified entity an opportunity to correct the errors. If the certified entity fails to correct the errors to NRCS' satisfaction, NRCS will consider whether to allow the certified entity to continue to purchase ALE-funded easements without prior NRCS approval, to decertify the entity in accordance with paragraph (c) of this section, or require the certified entity to take administrative steps necessary to remedy the deficiencies.

(c) *Review and decertification of the certified entity.* (1) NRCS will conduct a review of the certified entity a minimum of once every 3 years to ensure that the certified entities are meeting the certification criteria established in this section.

(2) If NRCS determines that the certified entity no longer meets these criteria, the Chief will:

(i) Provide the certified entity a specified period of time, at a minimum 180 days, in which to take such actions

as may be necessary to correct the identified deficiencies, and

(ii) If NRCS determines the certified entity does not meet the criteria established in this part after the 180 days, NRCS will send written notice of decertification of the entity's certification status or eligibility for future ACEP-ALE funding. This notice will specify the actions that have not been completed to retain certification status, the actions entity must take to request certification status, the status of funds in the cooperative agreement; and the eligibility of the entity to apply for future ACEP-ALE funds. The entity may contest the Notice of Decertification in writing to NRCS within 20 calendar days of receipt of the notice of decertification. The entity's letter must provide specific reasons why the decision to decertify is in error.

(3) The period of decertification may not exceed 3 years in duration, with duration of decertification based upon the seriousness of the facts; and

(4) The entity may be recertified upon application to NRCS, after the decertification period has expired, and when the entity has met the requirements as outlined under § 1468.20(d).

§ 1468.28 Violations and remedies.

(a) In the event of a violation of the agricultural land easement terms, the eligible entity will notify the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.

(b) In the event that the eligible entity fails to enforce any of the terms of the agricultural land easement as determined by NRCS, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law.

(c) Notwithstanding paragraph (a) of this section, NRCS, upon notification to the landowner and the eligible entity, reserves the right to enter upon the easement area if the annual monitoring report provided by the eligible entity documenting compliance with the agricultural land easement and the

agricultural land easement plan is insufficient or is not provided annually, the United States has evidence of an unaddressed violation, or to remedy deficiencies or easement violations as it relates to the agricultural land easement plan. In the event of an emergency, the entry may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate or mitigate a potential or unaddressed violation with notification to the landowner and eligible entity provided at the earliest practicable time. The landowner will be liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.

(d) The United States will be entitled to recover any and all costs from the eligible entity, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of the ACEP-ALE easement.

(e) In instances where an easement is terminated, the proponent of the termination action shall pay to CCC an amount determined by NRCS.

(f) If NRCS exercises its rights identified under an agricultural land easement NRCS will provide written notice to the eligible entity at the eligible entity's last known address. The notice will set forth the nature of the non-compliance by the eligible entity and a 60-day period to cure. If the eligible entity fails to cure within the 60-day period, NRCS will take the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land it seeks to protect.

Subpart C—Wetland Reserve Easements

§ 1468.30 Program requirements.

(a) *General.* (1) Under the ACEP-WRE, NRCS may purchase wetland reserve easements from with eligible landowners who voluntarily cooperate to restore, protect, and enhance wetlands on eligible private or Tribal lands. A 30-year contract enrollment

option is also available for acreage owned by Indian Tribes.

(2) To participate in ACEP-WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands.

(3) NRCS may provide financial assistance through an easement restoration agreement for the conservation practices and activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values and associated habitats.

(4) For ACEP-WRE enrollments, NRCS may implement such conservation practices and activities through an agreement with the landowner, a contract with a vendor, an interagency agreement, or a cooperative agreement with a cooperating entity. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner, NRCS or its designee.

(5) The duration of a wetland reserve easement may be either perpetual, 30-years, or the maximum duration permitted by State law. The duration of a 30-year contract on acreage owned by Indian Tribes is 30 years.

(b) *Acreage limitations.* (1) No more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in CRP and ACEP-WRE, and no more than 10 percent of the total cropland in the county may be subject to an easement under ACEP-WRE.

(2) The limitations in paragraph (1) of this subsection do not apply to areas devoted to windbreaks or shelterbelts after November 28, 1990, or to cropland designated by NRCS with "subclass w" in the land capability classes IV through VIII because of severe use limitations due to factors related to excess water such as poor soil drainage, wetness, high water table, soil saturation, or inundation.

(3) NRCS and the Farm Service Agency will concur before a waiver of the 25 percent limit of paragraph (b)(1) of this section can be approved for an easement proposed for enrollment in

ACEP-WRE. Such a waiver will only be approved if the waiver will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* To be eligible to enroll in the ACEP-WRE, all landowners must be in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12. Persons or legal entities must be in compliance with the Adjusted Gross Income Limitation provisions at 7 CFR part 1400 and:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Provide any documentation required by NRCS as necessary to determine eligibility;

(3) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170; and

(4) For easement applications, have been the landowner of such land for the 24-month period prior to the time of application unless it is determined by NRCS that:

(i) The land was acquired by will or succession as a result of the death of the previous landowner or pursuant to the terms of an existing trust,

(ii) The ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or

(iii) The land was acquired under circumstances that give adequate assurances, as determined by NRCS, that such land was not acquired for the purposes of placing it in the program. Adequate assurances will include documentation that the change of ownership resulted from circumstances such as:

(A) The prior landowner owned the land for 2 years or more and transferred ownership amongst members of the immediate family (father, mother, spouse, children, grandparents, or grandchildren),

(B) A completion of a contract for deed entered into 24 months or more prior to the application date,

(C) The new landowner had leased the land for agricultural purposes for 24 months or more prior to the application date, or

(D) The easement area is a portion of a larger property where the majority portion was acquired for agriculture purposes.

(4) Agree to provide such information to NRCS as the agency deems necessary to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *Transfer of parcel before purchase of easement.* When a parcel of land that has been accepted for enrollment into the ACEP-WRE is sold or transferred prior to NRCS purchase of the easement, NRCS will cancel the application or agreement to purchase and remove the acres from enrollment unless the new landowner meets the requirements of paragraph (c) of this section and accepts the terms and conditions of enrollment. The new landowner must submit required documentation for NRCS review and execute any required agreements or contracts. The decision to approve and execute an enrollment transferred prior to closing is at NRCS' discretion.

(e) *Land eligibility.* (1) Only private land or acreage owned by an Indian Tribe may be considered for enrollment into ACEP-WRE.

(2) NRCS will determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of such land and resultant wetland functions and values merit inclusion of such land in the program when considering the cost of acquiring the easement and the cost of the restoration, protection, enhancement, maintenance, and management.

(3) Land will only be considered eligible for enrollment in the ACEP-WRE if NRCS determines, in consultation with the FWS, that the enrollment of such land maximizes wildlife benefits and wetland function and values.

(4) To be determined eligible, NRCS must also determine that such land is—

(i) Farmed wetland or converted wetland, together with adjacent lands that are functionally dependent on the wetlands, if such land is identified by NRCS as:

(A) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop and retain wetland functions and values; or

(B) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored; or

(C) Farmed wetland and adjoining land enrolled in CRP that has the highest wetland functions and values and is likely to return to production after the land leaves CRP; or

(D) A riparian area along a stream or other waterway that links, or after restoring the riparian area, will link wetlands protected by the ACEP-WRE easement, another easement, or other device or circumstance that achieves the same objectives as an ACEP-WRE easement; or

(ii) Cropland or grassland that was used for agricultural production prior to flooding from the natural overflow of:

(A) A closed basin lake, together with adjacent land that is functionally dependent upon it, if the State or other entity is willing to provide 50 percent share of the cost of the an easement; or

(B) A pothole and adjacent land that is functionally dependent on it; and

(C) The size of the parcel offered for enrollment is a minimum of 20 contiguous acres. Such land meets the requirement of likelihood of successful restoration only if the soils are hydric and the depth of water is 6.5 feet or less.

(5) If land offered for enrollment is determined eligible under this subsection, then NRCS may also enroll land adjacent or contiguous to such eligible land together with the eligible

land, if such land maximizes wildlife benefits and contributes significantly to wetland functions and values. Such adjacent or contiguous land may include buffer areas, created wetlands, noncropped natural wetlands, riparian areas that do not meet the requirements of paragraph (e)(4)(i)(D) of this section, and restored wetlands, but not more than NRCS, in consultation with the State Technical Committee, determines is necessary to maximize wildlife benefits and contribute significantly to wetland functions and values. NRCS will not enroll as adjacent or contiguous land any constructed wetlands that treat wastewater or contaminated runoff.

(6) To be enrolled in the program, eligible land must have sufficient access and be configured in a size and with boundaries that allow for the efficient management of the area for program purposes and otherwise promote and enhance program objectives as determined by NRCS.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled in ACEP-WRE only if the land and landowner meet the requirements of this part and the enrollment is requested by the landowner and agreed to by NRCS. To enroll in ACEP-WRE, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The following land is not eligible for enrollment in the ACEP-WRE:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land established to trees under the CRP, except in cases where the land meets all other WRE eligibility criteria, the established cover conforms to WRE restoration requirements and NRCS specifications, an active CRP contract will be terminated or otherwise modified upon purchase of the WRE easement, and any additional criteria NRCS uses to determine if enrollment of such lands would further the purposes of the program;

(3) Lands owned the United States other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP-WRE;

(6) Lands where the purposes of the program or implementation of restoration practices would be undermined due to onsite or offsite conditions, including, but not limited to—

(i) Risk of hazardous substances either onsite or offsite,

(ii) Proposed or existing rights of way, either onsite or offsite, for infrastructure development, or

(iii) Adjacent land uses, such as airports, that would either impede complete restoration or prevent wetland functions and values from being fully restored; or

(7) Land which NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient.

§ 1468.31 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an application to NRCS.

(b) *Preliminary agency action.* By filing an application, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values and for other activities, such as the ranking and development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in costs.* In order to enhance the probability of enrollment in ACEP-WRE, the landowner or someone other than the landowner may offer to contribute financially to the cost of the acquisition or restoration of the wetland reserve easement to leverage Federal funds. This offer must be made in writing to NRCS.

§ 1468.32 Establishing priorities, ranking consideration and project selection.

(a) When evaluating easement or 30-year contract applications from landowners, NRCS, with advice from the State Technical Committee, may consider:

(1) The conservation benefits of obtaining an easement or other interest in the land, including but not limited to:

(i) Habitat that will be restored for the benefit of for migratory birds and wetland-dependent wildlife, including diversity of wildlife that will be benefitted or life-cycle needs that will be addressed;

(ii) Extent and use of habitat that will be restored for threatened, endangered, or other at-risk species or number of different at-risk species benefitted;

(iii) Protection or restoration of native vegetative communities;

(iv) Habitat diversity and complexity to be restored;

(v) Proximity and connectivity to other protected habitats;

(vi) Extent of beneficial adjacent land uses;

(vii) Proximity to impaired water bodies;

(viii) Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types;

(ix) Hydrology restoration potential, which must comprise at least 50 percent of the points for conservation benefits.

(2) The cost effectiveness of each easement;

(3) Whether the landowner or another person is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of this part would be achieved on the land;

(5) The productivity of the land;

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

(7) Such other factors as NRCS determines are necessary to carry out the purposes of the program.

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(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS will give priority to:

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife, in consultation with FWS, as may be appropriate.

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on:

(1) Certain land types or geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives; and

(2) Land that is currently enrolled in CRP in a contract that is set to expire within one year from the date of application and is farmed wetland and adjoining land that has the highest wetland functions and values and is likely to return to production after the land leaves CRP.

(d) Notwithstanding any limitation of this part regarding priority ranking, NRCS may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. NRCS may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate. NRCS may coordinate with other Federal, State, and nonprofit organizations to encourage the restoration of wetlands on adjacent ineligible lands, especially in priority geographic areas.

§ 1468.33 Enrollment process.

(a) *Tentative selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in ACEP-WRE, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of

NRCS' intent to continue the enrollment process on their land.

(c) *Acceptance and effect of offer of enrollment—(1) Wetland reserve easement.* For applications requesting enrollment through a wetland reserve easement, NRCS will present an agreement to purchase to the landowner which will describe the easement area, the easement compensation amount, the easement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The easement compensation amount will be based upon the lowest of the fair market value of the land, the geographic area rate cap, or the landowner offer, as provided in §1468.34 of this part. The landowner accepts enrollment in the ACEP-WRE by signing the agreement to purchase. NRCS will continue with easement acquisition activities after the property has been enrolled.

(2) *30-year contract.* For applications requesting enrollment of acreage owned by an Indian tribe through the 30-year contract option, NRCS will present an agreement to enter 30-year contract to the Tribal landowner which will describe the contract area, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The Tribal landowner accepts enrollment in the ACEP-WRE by signing the agreement to enter 30-year contract. NRCS will proceed with implementation of the WRPO after the 30-year contract has been executed.

(d) *Restoration responsibility and the scope of enrollment.* (1) The enrollment document establishes the terms of enrollment consistent with the terms and conditions of this part and identifies the:

(i) Scope of the agreement between NRCS and the landowner,

(ii) Basis for NRCS to obligate funds, and

(iii) Nature and method through which NRCS will provide ACEP-WRE technical and financial assistance to the landowner.

(2) The agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land and sufficient access to the enrolled land as set forth under § 1468.37,

(ii) Implementing a WRPO which provides for the restoration and protection of the wetland functions and values,

(iii) Recording the easement in accordance with applicable State law,

(iv) Ensuring the title to the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS and in accordance with Department of Justice Title Standards, and

(v) Withholding the landowner's share of the restoration cost from the easement payment for 30-year or non-permanent easement or 30-year contract enrollments.

(3) The terms of the easement identified in paragraph (d)(2)(i) of this section includes the landowner's agreement to the implementation of a WRPO identified in paragraph (d)(2)(ii) of this section. In particular, the easement deed identifies that NRCS has the right to enter the easement area to undertake on its own or through an agreement with the landowner or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.

(4) At the time NRCS enters into an agreement to purchase, NRCS agrees, subject to paragraph (e) of this section, to acquire and provide for restoration of the land enrolled into the program.

(e) *Withdrawal of offer of enrollment.* Prior to execution of the easement deed by the United States and the landowner, NRCS may withdraw the land from enrollment at any time due to lack of availability of funds, inability to clear title, insufficient access, sale of the land, risk of hazardous substance contamination, or other reasons.

(f) *Landowner failure to accept enrollment offer in timely manner.* The offer of enrollment to the landowner will be void if not executed by the landowner within the time specified.

§ 1468.34 Compensation for easements and 30-year contracts.

(a) *Determination of easement payment rates.* (1) Compensation for an easement or 30-year contract under this part will

be made in cash in such amount as is agreed to and specified in the agreement to purchase or agreement to enter 30-year contract and finalized in the warranty easement deed or 30-year contract.

(2) Payments for 30-year easements, nonpermanent easements as limited by State law, or 30-year contracts will be not more than 75 percent of that which would have been paid for a permanent easement as determined by the methods listed in paragraph (a)(3) of this section.

(3) NRCS will pay as compensation the lowest of the following:

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices or based on an areawide market analysis or survey,

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section, or

(iii) A written offer made by the landowner.

(4) Each fiscal year NRCS, in consultation with the State Technical Committee, will establish one or more geographic area rate caps within a State. NRCS will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: soil types, types of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement.

(2)(i) For easements or 30-year contracts valued at \$500,000 or less, NRCS will provide compensation in up to 10 annual payments, as requested by the participant, as specified in the agreement to purchase or agreement to enter 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than \$500,000, NRCS may provide compensation in at least 5, but not more than 10 annual

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payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the NRCS Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the agreement to purchase a conservation easement (APCE) or agreement to enter contract for 30-year land use, entered into between NRCS and the landowner.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse the landowner for fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as authorized and determined by NRCS.

(d) *Per acre basis calculations.* If easement or 30-year contract payments are calculated on a per acre basis, NRCS will identify an estimated amount in its agreement to purchase and the final easement or 30-year contract payment will be made based on final determination of acreage and specified in the warranty easement deed or 30-year contract.

§ 1468.35 Wetland Reserve Enhancement Partnerships.

(a) The purpose of the Wetland Reserve Enhancement Partnership (WREP) option is to target and leverage resources to address high priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, or Indian Tribes.

(b) NRCS will establish priorities for funding, required level of partner contribution of resources, ranking criteria, and other criteria. Among other selection criteria, NRCS will prioritize proposals that address wetland restoration needs of national or regional importance, including special project or area-wide proposals.

(c) NRCS will make the information regarding WREP available to the public and potential partners.

(d) NRCS will evaluate proposals and make final funding selections based upon the priorities identified in the public notice of funding availability.

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(e) NRCS will enter into WREP agreements with partners who have projects selected for funding.

§ 1468.36 WRPO payments.

(a) NRCS may provide financial assistance for implementing the WRPO on the enrolled land. The amount and terms and conditions of the financial assistance will be subject to the following restrictions on the costs of establishing or installing conservation practices or activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a 30-year or nonpermanent easement or 30-year contract, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs. The landowner's share of the WRPO implementation costs may be withheld from the easement or 30-year contract payment.

(b) Payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO.

(c) Payments may be made for replacement of an eligible conservation practice, if NRCS determines that the practice is still needed and that the failure of the original conservation practice was due to reasons beyond the control of the participant.

(d) A participant may seek additional assistance from other public or private organizations as long as the conservation practices or activities funded are approved by NRCS and implemented in compliance with this part.

§ 1468.37 Easement and 30-year contract participation requirements.

(a) *Easement requirements.* (1) To enroll eligible land in ACEP-WRE through the permanent or 30-year easement option, a landowner will grant an easement to the United States. The easement will require that the easement area be maintained in accordance

with ACEP-WRE goals and objectives for the duration of the term of the easement, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the duration of its term, the easement will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the warranty easement deed and with the terms of the WRPO. In addition, the easement will grant to the United States:

(i) A sufficient right of legal access to the easement area,

(ii) The right to authorize compatible uses of the easement area, including such activities as hunting and fishing, managed timber harvest, or periodic haying or grazing, if such use is consistent with the long-term protection and enhancement of the wetland resources for which the easement was established,

(iii) All rights, title, and interest in the easement area except those rights specifically reserved in the deed, and

(iv) The right to restore, protect, enhance, maintain, and manage activities on the easement area.

(3) The landowner will convey title to the easement in a manner that is acceptable to NRCS. The landowner will warrant that the easement granted to the United States is superior to the rights of all others, except for title exceptions deemed acceptable by NRCS.

(4) The participant will:

(i) Comply with the terms of the easement,

(ii) Comply with all terms and conditions of any related contract or agreement,

(iii) Agree to the permanent retirement of any existing cropland base and allotment history for the easement area, as determined by FSA,

(iv) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the easement in accordance with the terms of the easement and related agreements, and

(v) Agree that each person or legal entity that is subject to the easement

will be jointly and severally responsible for compliance with the easement and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the easement or the provisions of this part.

(b) *30-year contract requirements.* (1) To enroll eligible land in ACEP-WRE through the 30-year contract option, a landowner will enter into a contract with NRCS. The contract will require that the enrolled area be maintained in accordance with ACEP-WRE goals and objectives for the duration of the contract, including the restoration, protection, enhancement, maintenance, and management of wetland and other land functions and values.

(2) For the duration of the 30-year contract, the contract will require, at a minimum, that the landowner and the landowner's heirs, successors, and assigns will, consistent with the terms of this part, cooperate in the restoration, protection, enhancement, maintenance, and management of the land in accordance with the contract and with the terms of the WRPO. In addition, the 30-year contract will grant to NRCS:

(i) A sufficient right of legal access to the entire contract area for the duration of the contract,

(ii) The right to authorize compatible uses of the contract area, including such activities as a traditional Tribal use of the land, hunting and fishing, managed timber harvest, or periodic haying or grazing if such use is consistent with the long-term protection and enhancement of the wetland resources for which the contract was established, and

(iii) The right to restore, protect, enhance, maintain, and manage activities on the enrolled area.

(3) The landowner will:

(i) Comply with the terms of the contract,

(ii) Comply with all terms and conditions of any associated agreement,

(iii) Agree to the long-term restoration, protection, enhancement, maintenance, and management of the enrolled area in accordance with the terms of the contract and related agreements, and

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(iv) Agree that each person or legal entity that is subject to the contract will be jointly and severally responsible for compliance with the contract and the provisions of this part and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the contract or the provisions of this part.

(c) *Reservation of grazing rights.* (1) NRCS may include in the terms and conditions of an easement a provision under which the landowner reserves grazing rights if NRCS determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the wetland reserve easement or 30-year contract,

(ii) Is consistent with the historical natural uses of the land and long-term wetland protection and enhancement goals for which the wetland reserve easement or 30-year contract was established,

(iii) Is subject to a recorded Exhibit to the deed outlining grazing purposes and limitations, and

(iv) Complies with a WRPO developed by NRCS.

(2) Compensation for easements or 30-year contracts where the grazing rights are reserved under this subsection will be based on the method described in §1468.34, except such compensation will be reduced by an amount equal to the value of the reserved grazing rights, as determined by NRCS.

§ 1468.38 The WRPO development.

(a) The WRPO will be developed as determined by NRCS in consultation with the State Technical Committee and consideration of available site-specific technical input from FWS and others as appropriate.

(b) The WRPO will specify the manner in which the enrolled land will be restored, protected, enhanced, maintained, and managed to accomplish the goals of the program. The WRPO will be developed to ensure that cost effective restoration and maximization of wildlife benefits and wetland functions and values will result. Specifically, the WRPO will consider and address, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hy-

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drology and associated wildlife and wetland functions and values.

§ 1468.39 Violations and remedies.

(a) *Easement violations.* (1) In the event of a violation of the easement or 30-year contract involving the landowner, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation at the landowner's expense.

(2) Notwithstanding paragraph (a)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important wetland functions and values or other rights of the United States under the easement. The landowner will be liable for any costs incurred by the United States as a result of the landowner's failure to comply with easement obligations.

(3) If there is failure to comply with easement obligations, the easement will remain in effect, and NRCS may, in addition to any other remedy available to the United States, retain any payment otherwise required to be paid under this part and require the refund of any payment previously made under this part.

(b) *30-year contract or wetland reserve easement restoration agreements violations.* (1) If NRCS determines that a landowner is in violation of the terms of a 30-year contract or wetland reserve easement restoration agreement, or documents incorporated by reference into the 30-year contract or wetland reserve easement restoration agreement, the landowner will be given reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS determines is necessary to correct the violation. If the violation continues, NRCS may terminate the 30-year contract or wetland reserve easement restoration agreement.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, a 30-

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year contract or wetland reserve easement restoration agreement termination is effective immediately upon a determination by the NRCS that the landowner has:

- (i) Submitted false information,
- (ii) Filed a false claim, or
- (iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part.

(3) If NRCS terminates a 30-year contract or wetland reserve easement restoration agreement, the landowner will forfeit all rights for future payments under the 30-year contract or wetland reserve easement restoration agreement, and must refund all or part, as determined by NRCS, of the payments received, plus interest.

PART 1469—CONSERVATION SECURITY PROGRAM

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 3830 *et seq.*

SOURCE: 70 FR 15212, Mar. 25, 2005, unless otherwise noted.

Subpart A—General Provisions

§ 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) The Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

§ 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related